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Persons--Marriage--Annulment

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as inviolable as possible, and that a precedent is created that would seem to lead to a letting down of the bars so that marriage may subserve business ends or afford amusement rather than the purpose intended for it by divine and common law.

Perhaps in this particular instance the best interests of all involved will be subserved by the decision of the court. But such decision must of necessity have a demoralizing effect upon the young people of today. It must lessen their respect for marriage and cause them lightly to enter into marriage, thinking that if they find such relation disagreeable they can have it annulled. In answer to this it might be said that where there has been no cohabitation the relation has not changed. But the matter of proving cohabitation is met with difficulty when both parties deny it.

The English courts grant annulment only if there is no reality of consent and if there is consent, no fraud inducing that consent is material. Germany, Switzerland, and some of the other European countries seem to take a much more liberal view and grant annulment on ground of mistake in nationality or in personal qualities and characteristics.[11] It is not contended that the extreme view of the English courts should be adopted, and surely, the most liberal ones are not advisable. It would seem that the view of most of the American courts, *viz.*, granting annulment on the ground of mistake, fraud, duress or some incapacity to contract, is the wisest view.[12] But it should not be extended.

It is not to be argued that parties unsuited to each other should be made to live together as husband and wife. But should people lightly enter into an illadvised marriage it would not be an uncommon or extreme punishment to require them to wait the statutory period for desertion—say, three years—to get a divorce. The same end would be accomplished, the parties to the transaction would have paid for their offense to society, and better example would be set for others, for people will not be prone to thoughtlessly rush into a situation that it will take three years to change.

—*R. G. K.*

PRACTICE AND PROCEDURE—NATURE OF MOTION FOR JUDGMENT—SUFFICIENCY.—The proceeding by notice of motion for judgment under Chapter 121 of the West Virginia Code is being used more and more frequently by practitioners in this state. The reason

[11] Moss *v.* Moss (1897) P. 263.
[12] 26 CYC 901.

for this is found in the simplicity of the proceeding, and the utter absence of the technical requirements incident to pleading at common law. Virginia, also, has a similar statute which, although made broader in its scope by recent amendments, is coincident with the West Virginia proceeding in its general principles.[1]

The notice takes the place of both writ and declaration and is served on the defendant in the same manner as process.[2] Service must be made twenty days before and the return fifteen days before the motion is heard.[3] The notice is not an official paper until it is returned to the clerk's office.[4] Hence the action does not start until the return has been made and the notice filed with the clerk.

The remedy under a proceeding by notice of motion for judgment in West Virginia is restricted to the recovery of money due on contract.[5] The plaintiff then may use this proceeding only where he is entitled to recover money by action on contract. It may not be used to recover damages for a breach of contract, nor as a substitute for any action sounding in damages.[6]

In order to be sufficient a notice of motion for judgment should properly fulfill its office as notice to the defendant, and also set out the claim on which the defendant is proceeding.[7] How particular a statement of the plaintiff's claim then is necessary? The essential idea behind this proceeding is that it provides a speedy and simple method of recovering money due on contract. Thus it has been made informal in its nature and devoid of technicality. The West Virginia Supreme Court and the like Virginia tribunal have stated many times that great latitude and liberality shall be given in construing the sufficiency of a notice of motion for judgment.[8] However, regardless of this leaning towards a liberal construction, the Virginia court has held that to be sufficient the notice must state a cause of action.[9] Our own court also definitely

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[1] VA. CODE 1919, c. 251, § 6046, extends the right to proceed by notice of motion for judgment to any action at law, instead of restricting its use to actions to recover money due on contract.

[2] Security Loan & Trust Co. *v.* Fields, 110 Va. 827, 67 S. E. 342 (1919); Morstock Insurance Co. *v.* Pankey, 91 Va. 259, 21 S. E. 487 (1895); Hastings *v.* Gump, 89 W. Va. 111, (1921).

[3] W. VA. CODE, 1916, c. 121, § 6. Knox *v.* Horner, 58 W. Va. 136, 51 S. E. 979 (1905).

[4] BURK'S PLEADING AND PRACTICE, § 96.

[5] W. VA. CODE, 1916, c. 121, § 6. Anderson *v.* Prince, 60 W. Va. 557, 55 S. E. 656 (1906); Wilson *v.* Dawson, 96 Va. 687, 32 S. E. 461 (1899); Long *v.* Pence, 93 Va. 584, 25 S. E. 593 (1896).

[6] Wilson *v.* Dawson, *supra;* Western Union Telegraph Co. *v.* Bright, 90 Va. 778, 20 S. E. 146 (1894).

[7] Security Loan & Trust Co. *v.* Fields, *supra.*

[8] Liskey *v.* Paul, 100 Va. 764, 42 S. E. 875 (1902); Knox *v.* Horner, *supra;* Board of Education *v.* Parsons, 22 W. Va. 308 (1883).

[9] Security Loan & Trust Co. *v.* Fields, *supra.*

took this position in a recent case.[10] Is this holding consistent with previous decisions in this state? While the exact point had not been definitely passed on previously so as to leave it without doubt, yet other decisions have at least intimated that the notice to be sufficient must state a cause of action.[11] While this is a step away from liberal construction yet it is a necessary one. If no standard were set as to what constituted a sufficient statement of the plaintiff's claim as set out in a notice of motion for judgement, endless confusion and disagreement would result, and the utility of this proceeding would be sadly injured. If a standard were to be set it is only logical to require the notice to state a cause of action. To require more would be useless and of no value; to require less would be to endanger the right of the defendant to a clear statement of the claim against him in order that he may intelligently prepare to defend. Thus the West Virginia court seems to be correct in requiring a notice of motion for judgment to state a cause of action in order to be sufficient.[12] *R. J. R.*

CRIMINAL LAW—INTOXICATING LIQUORS—EVIDENCE SUFFICIENT TO SUSTAIN VERDICT.—Defendants were convicted of transportation of more than one quart of intoxicating liquors in violation of section 31 of chapter 32A of the Code. The defendants about to be arrested broke three half gallon jars which had contained an unknown amount of whiskey. One witness testified that from the appearance where it was spilled on the ground that there was about a gallon in two of the jars. The defendants did not testify. There was a motion to set aside the verdict on the ground, *inter alia,* that there was not sufficient evidence to sustain the verdict that the transportation was of more than one quart. *Held,* that there was sufficient evidence to sustain the conviction; that the facts proven in this case, unexplained, were sufficient to justify the jury's verdict. *State* v. *Hussion,* 112 S. E. 309 (W. Va. 1922).

This is the first case of this character to come before the West Virginia court for decision. It would seem that this decision is sound upon principle. The test in determining whether a verdict should be sustained or reveresd because of insufficiency of evidence is whether or not the jury could reasonably have found such a verdict. It is not enough that the members of the appellate court think that if they had been on the jury they might have found a

[10] Hastings *v.* Gump, *supra.*
[11] Anderson *v.* Prince, *supra.*
[12] Hastings *v.* Gump, *supra.*